IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.114 OF 2006
IN
CONTEMPT PETITION NO.69 OF 2005

Narinjan Singh Bajaj & Ors. ..Petitioners.

V/s.

Thane Municipal Corporation, Thane & ors..Respondents.

And

Shaikh Jaibunnisa Abdul Latif & Ors. ..Respondents.

Mr.S.M.Oak, advocate for petitioners/applicants.

Mr. R.S.Apte, advocate for respondent Nos. 1 and 2.

Mr. P.S.Dani with Sandesh Deshpande for respondent Nos. 5 to 9.

Mr. Sandesh Deshpande for Power of Attorney i.e. R.No.5A.

CORAM: A.M.KHANWILKAR,J

DATE : SEPTEMBER 13, 2006.

P.C. :

1. After hearing counsel for the parties, I find merits in the objection taken on behalf of the respondents that this application is yet another attempt to resort to abuse of process of court. This submission is made on the premiss that the applicants are seeking review and recall of the order passed by me on 15th June, 2006. That relief is claimed without disclosing the fact that the applicants had

carried the matter in appeal before the Apex Court being Petition for Special Leave to Appeal (Civil) No.13872 of 2006 praying for setting aside the self-same Judgment and Order passed in Civil Application No.4 of 2006 in Contempt Petition No.69 of 2005 and W.P.No.3646 of 2006. The said SLP came to be dismissed on 1st September, 2006, whereas the present application has been filed on the same date i.e. 1st September, 2006 before this court. Having realised the difficulty, Mr.Oak appearing for petitioners/applicants herein fairly accepts that it will not be open to the petitioners/applicants to ask for the first part of the relief in terms of prayer clause (a) of the application. He submits that the petitioners/applicants herein may be permitted to amend the prayer clause (a) by deleting the following words.

> "The order dated 15th June 2006 passed by this Honourable Court in the aforesaid contempt petition be reviewed and/or recalled and"

He submits that latter part of the prayer clause (a) will survive for consideration and can be considered alongwith the Contempt Petition No.69 of 2005, which

is still pending before this court. Ordinarily, I would have been disposed of to reject the present application in its entirety. However, the issue that is sought to be raised by the petitioner, as claimed in the latter part of the prayer clause(a), that issue, in any case, will have to be considered while examining the contempt petition, which is pending for hearing. This is not to say that it will not be open to the court to initiate suo moto contempt action, even if the contempt petition instituted by Ms. Khairunnisa Rais Chaudhary, was held to be not maintainable, as is contended in the present application. That aspect can be considered at the appropriate stage.

2. Accordingly, petitioners are permitted to delete first part of the prayer clause(a) as extracted above, which request was made across the bar by the counsel appearing for the petitioners and has been accepted under this order. Amendments to be carried out within three days.

3. Counsel for the petitioners make formal prayer for extending time to vacate suit premises which has been granted till 15th September, 2006. This prayer is however, opposed by the counsel for

the respondents/original petitioners. At the same time, counsel for the respondents/original petitioners would submit that his client will have no difficulty in showing indulgence to the applicants herein by granting reasonable time on humanitarian consideration. Such indulgence can be shown, only if the applicants who have approached this court were to tender unconditional undertaking that they will not pursue any other claim or ground including ground raised in the present application against the respondents/original petitioners. This submission is made as the respondents/original petitioners apprehend that they will be embroiled in series of litigation.

4. The counsel for the petitioners/applicants herein however, submits that he cannot give such undertaking on behalf of his clients. He further submits that in that case, the applicants will not press for the relief of extension of time before this court and they may consider of moving the appropriate Court for such relief. Suffice it to observe that the applicants are not pressing relief for extension of time before me. That does not mean that the applicants can take liberty before some other bench of this court, which will result in forum shopping.

In the fact situation of the case, remedy, if any, for the Applicants will be only before the Supreme Court, if they are so advised. This is so because the Supreme Court has already decided the matter on merits on 1st September, 2006 against the petitioners/applicants herein. This position is restated only to clarify that the subordinate court may not be influenced by the observation made in this order that the applicants will be free to approach appropriate court which would include remedy of filing of independent suit by the petitioners/-applicants herein so as to interdict the process, which is already pending in this court or for that matter to circumvent the undertaking given before this court whereunder they are required to vacate the suit premises on or before 15th September, 2006 unconditionally. On accepting that undertaking, this court had showed indulgence to the petitioners/applicants herein, which fact cannot be overlooked.

5. Accordingly, by this order request for leave to amend first part of prayer clause(a) as made on behalf of the petitioners/applciants alone is accepted. Rest of the prayers are declined.

6. It is made clear that the order passed on 15th June, 2006 will be given effect to by all concerned.